

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CRISTINA TANNER, Individually and as
Legal Guardian of Jason Tanner, and as
Assignee of Risen Foods LLC,

Plaintiff,

- against -

HEFFERNAN INSURANCE BROKERS,
INC., DANA SCHILLER, and RISEN
FOODS LLC,

Defendants.

NOTICE OF REMOVAL

Case No. 6:19-CV-0255 (BKS/TWD)

Defendants Heffernan Insurance Brokers, Inc. (“Heffernan”) and Dana Schiller (collectively “Defendants”), by and through their attorneys Lewis Brisbois Bisgaard & Smith LLP, respectfully submits as follows:

1. On January 25, 2019, Plaintiff e-filed the Complaint in the above-entitled action (Exhibit A hereto), pending in the Supreme Court of New York, Oneida County (Index No. 002837/18), and purporting to give notice of the nature of the claims for relief upon which the action is based. Previously, on December 18, 2018, Plaintiff had filed an Amended Summons with Notice and, after service of process upon Defendants, Defendants had appeared by counsel and demanded service of a complaint. Defendants have not filed an answer or other responsive pleading in the pending action in the Supreme Court, and the time for them to do so has not yet run.

2. Defendants hereby remove this action based on diversity of citizenship pursuant to 28 U.S.C. § 1331. Heffernan is incorporated in and has its principal place of business in California. Schiller is a resident and citizen of California.

3. Plaintiff is a citizen of the State of New York (Complaint ¶ 1).

4. The amount in controversy is alleged to be in excess of \$3,000,000, according to the Complaint (¶ 105).

5. Defendant Risen Foods LLC (“Risen”) is not diverse, but the Court must disregard the lack of diversity created by naming this party as Risen was fraudulently joined as a defendant. As the Complaint reveals, Risen entered into a settlement with Plaintiff pursuant to which Plaintiff acquired Risen’s rights as against Defendants, and Risen cannot be held liable to Plaintiff for damages (see Complaint Exhs. A and B). This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is being filed within 30 days of Defendants’ January 25, 2019 receipt of the Complaint setting forth the claims for relief upon which the action is based.

6. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the Supreme Court, Oneida County, in which the action had been pending. Defendants could not determine that Risen was fraudulently joined such that the case could be removed until the Complaint was filed.

WHEREFORE, Defendants respectfully requests that the above-captioned action be removed from the Supreme Court of New York, Oneida County, to the United States District Court, Northern District of New York.

Dated: New York, New York
February 21, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Peter T. Shapiro
Peter T. Shapiro, Esq.
*Attorneys for Defendants Heffernan Insurance
Brokers, Inc. and Dana Schiller*
77 Water Street, Suite 2100
New York, New York 10005
212-232-1300
peter.shapiro@lewisbrisbois.com

TO: BARTH SULLIVAN BEHR LLP
43 Court Street, Suite 300
Buffalo, New York 14202-
716-856-1300
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Peter T. Shapiro, an attorney duly admitted to practice before this Court, certifies that on February 21, 2019, he caused the Notice of Removal to be filed by ECF and served by first class mail upon the attorneys of record for plaintiff.

/s/ Peter T. Shapiro

Peter T. Shapiro